

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

National Association of State Utility)
Consumer Advocates' Petition for)
Declaratory Ruling Regarding Monthly)
Line Items and Surcharges Imposed by)
Telecommunications Carriers)

CG Docket No. 04-208

COMMENTS OF VERIZON

Of Counsel
Michael E. Glover
Edward Shakin

Julie Chen Clocker
VERIZON
1515 North Court House Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3071

*Counsel for the
Verizon telephone companies*

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Introduction and Summary

The Commission has recognized that a carrier must have the flexibility to determine what to charge and how to bill its customers in the manner best suited to respond to its customers' needs. In its petition for declaratory ruling,² however, NASUCA seeks to have the Commission handcuff carriers' ability to engage in lawful, permitted recovery of certain costs by prohibiting telecommunications carriers from imposing any line item charges unless "both recovery of the fee, and the amount of the fee carriers are entitled to assess, is expressly mandated by federal, state or local government." *NASUCA Petition* at 24. While no one disputes that providing accurate and truthful billing information to consumers is critical, NASUCA's petition would limit the ability of carriers to truthfully identify the separate nature of consumer charges. The Commission should therefore dismiss NASUCA's petition.

¹ The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. identified in the list attached as Exhibit A hereto.

² *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Monthly Line Items and Surcharges Imposed by Telecommunications Carriers*, CG Docket No. 04-208 (filed Mar. 30, 2004) ("*NASUCA Petition*").

In addition, the petition fails procedurally. Line item charges are not only lawful, but expressly authorized and permitted by this Commission in the *Truth-in-Billing Order*³ and in its many other decisions addressing specific charges. To the extent NASUCA is seeking to change existing law or to have this Commission establish new rules governing line item charges, NASUCA may not do so through a petition for declaratory ruling, but rather must do so through a rulemaking proceeding. Finally, the rule sought by NASUCA – to ban outright any line item charges unless the recovery of those charges is expressly mandated by a regulating agency – would also run into significant First Amendment concerns. Line item charges and their descriptions are constitutionally protected speech as they convey information reflecting governmental regulations and policies, and the costs to consumers of those regulations and policies. The ability of carriers to convey such information thus lies at the heart of our democratic system of government. At a minimum, line item charges are entitled to the protection afforded commercial speech, under which courts have found that broad prophylactic rules are rarely appropriate. NASUCA’s concern with misleading or deceptive line item charges cannot support an outright ban. Rather, truly deceptive practices can be dealt with directly on an individual basis through enforcement by the FCC or state agencies. The Commission should not punish ethical carriers for the conduct of a few bad actors.

³ *Truth-In-Billing and Billing Format*, 14 FCC Rcd 7492 (1999) (“*Truth-In-Billing Order*”).

Discussion

I. Line Item Charges Are Lawful, Expressly Authorized and May Not Be Prohibited Through NASUCA's Petition for Declaratory Ruling.

In its petition for declaratory ruling, NASUCA suggests that all carriers have sought to take advantage of various “loopholes”⁴ in the *Truth-In-Billing Order* and the “inadvertent” opening left by the Commission in the USF Contribution Order⁵ to impose line item charges for recovery of fees, costs and surcharges. Despite NASUCA's attempt to cast line item charges in a negative light, there is nothing illegal or suspect about line item charges. In fact, the recovery of line item charges is not only lawful but expressly permitted by the FCC.

Line item charges in general as well as specific line item charges have been thoroughly debated and considered by this Commission in the *Truth-In-Billing Order* and in other proceedings addressing access charges, universal services funding, local number portability, number pooling, and others.⁶ In the *Truth-In-Billing Order*, the Commission expressly stated, “While we adopt guidelines to facilitate consumer understanding of [line item charges associated

⁴ See, e.g., *NASUCA Petition* at fn.16 and p. 59-60 (“carriers are exploiting loopholes”).

⁵ *Federal State Joint Board on Universal Service*, 17 FCC Rcd 24952 (2002) (“*USF Contribution Order*”).

⁶ See, e.g., *USF Contribution Order* ¶ 42 (“carriers currently have the flexibility to recover their contribution obligations in any manner that is equitable and nondiscriminatory”); *Telephone Number Portability*, 13 FCC Rcd 11701, ¶¶ 135-36 (1998) (“*LNP 3rd R&O*”) (“We will allow but not require incumbent LECs subject to rate-of-return or price-cap regulation to recover their carrier-specific costs directly related to providing number portability through a federal charge assessed on end-users. . . . Carriers not subject to rate regulation -- such as competitive LECs, CMRS providers, and non-dominant IXC -- may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with their obligations under the Communications Act”); *Numbering Resource Optimization*, 17 FCC Rcd 252, ¶ 3 (2001) (“We will allow, but not require, incumbent LECs (ILECs) subject to rate-of-return regulation to recover their carrier-specific costs directly related to thousands-block number pooling implementation through interstate access charges. Carriers not subject to rate regulation, such as competitive LECs (CLECs) and CMRS providers, may recover their carrier-specific costs directly related to implementation of thousands-block number pooling in any lawful manner consistent with their obligations under the Communications Act of 1934, as amended”).

with federal regulatory action] and comparison among service providers *we decline the recommendations of those that would urge us to limit the manner in which carriers recover these costs of doing business.*” *Truth-In-Billing Order* ¶ 50 (emphasis supplied). In fact, in that proceeding, some commenters urged that service providers be required to combine all regulatory fees into one charge or should be prohibited from separating out any fees resulting from regulatory action. *Id.*, ¶ 55. Other commenters, including NASUCA, urged the Commission to require carriers to include on bills per-minute rates that include all fees associated with the service, similar to its request now to require providers to include such fees as part of their base rate. The Commission, however, rejected all such attempts to limit or prohibit line item charges. It stated, “We decline at this time to mandate such requirements, but rather prefer to afford carriers the freedom to respond to consumer and market forces individually, and consider whether to include these charges as part of their rates, *or to list the charges in separate line items.*” *Id.* (emphasis supplied).

In addition to the *Truth-In-Billing Order*, the Commission has expressly authorized the recovery of specific surcharges via line item in its consideration of those individual charges, many of which were the subject of numerous rulemaking proceedings. For example, with respect to Universal Services Funding, the Commission gave carriers the option, but not the obligation, to recover their contribution obligations “in any manner that is equitable and nondiscriminatory” and to do so through separate line item charges.⁷ Moreover, the Commission refused to mandate the amount carriers could recover for their contribution, except to state that *if* carriers elected to recover the contribution in a separate line item charge, the amount of the line item charge could not exceed the relevant assessment, but that other costs

⁷ *USF Contribution Order* ¶ 53 (“Carriers will continue to have flexibility to recover their contribution costs through their rates or through a line item”).

could still be recovered through separate line item charges or in carriers' rates.⁸ Similarly, with local number portability fees, the Commission also permitted, but did not mandate, the recovery of "their carrier-specific costs directly related to providing number portability in any lawful manner consistent with their obligations under the Communications Act." *LNP 3rd R&O* ¶ 136. In short, NASUCA's petition for declaratory ruling must be dismissed because the line item charges contained in carriers' bills are expressly permitted by the Commission.

Furthermore, because line charges are lawful and expressly permitted by the Commission, which NASUCA itself acknowledges,⁹ NASUCA cannot obtain the relief that it seeks through a petition for declaratory ruling. A petition for declaratory ruling is appropriate only to terminate a controversy or to remove uncertainty.¹⁰ Although NASUCA claims that it "is not asking the Commission to overturn prior decisions *allowing* carriers to recover specific assessments mandated by regulatory action through line item charges" *NASUCA Petition* at vii (emphasis supplied), it clearly seeks to do just that. It is now asking the Commission to prohibit line items altogether unless their recovery is not only *allowed* by a governing agency but *mandated* and to require that those line item charges "closely match" the assessed amount,¹¹ all in direct contravention of what the Commission currently allows. Thus, NASUCA is clearly

⁸ *USF Contribution Order* ¶¶ 51, 53 ("carriers that elect to recover their contribution costs through a separate line item may not mark up the line item above the relevant contribution factor. . . . We stress that this rule only applies to carriers that chose to recover their contribution costs through a line item").

⁹ See, e.g. *NASUCA Petition* at 59 ("Nothing in the Commission's [*Truth-In-Billing*] *Order* and *Contribution Order* specifically tells carriers what surcharges they may impose to recover their costs of complying with regulatory action, or how those surcharges should be calculated").

¹⁰ 47 CFR § 1.2.

¹¹ See *NASUCA Petition* at 24 ("Prohibit all line-items, surcharges and fees unless both recovery of the fee, and the amount of the fee carriers are entitled to assess, is expressly mandated by federal, state or local government"); *id.* at vii ("NASUCA is also asking the Commission to declare that line items allowed must closely match the regulatory assessment").

asking this Commission to overturn existing law and to issue new rules, relief which may not be granted in a petition for declaratory ruling, but must be subject to the rulemaking procedures of notice and comment under section 553 of the Administrative Procedures Act.¹² Because there is no doubt that line item charges are permitted and NASUCA's petition seeks this Commission to impose new rules under the guise of a declaratory ruling, the Commission should dismiss NASUCA's petition on this ground alone.

II. Carriers Are Entitled To Inform Their Customers About What They Are Being Charged And To Differentiate Themselves In A Competitive Market.

Not only are line item charges lawful, but carriers have a right to inform their customers about the nature of the surcharges, costs and fees that are being assessed. Many of these surcharges are costs that companies have to bear only because of governmental action. In separately identifying these charges from the base rate, carriers are not only able to inform consumers about the origin of these charges but also to ensure that consumers only pay those charges and fees that are imposed by their applicable jurisdiction and that are imposed on the services they have selected. As Chairman Powell recently noted, carriers should not be blamed for adding these surcharges as they are only trying to recover the costs they must pay to the federal or state government and carriers should not have to include these surcharges in their rates.¹³

Companies facing competition must also be able to respond to consumer demand and preferences. One way in which companies can compete is to offer bills that are clear, informative and responsive to consumer demands. In rejecting calls for more limitations and

¹² 5 U.S.C. § 553.

¹³ Todd Wallack, *FCC Chief Worries About Fees, Phone Competition May Be Hindered*, Powell Says, San Francisco Chronicle, July 13, 2004, at D.1 ("If a consumer is upset, part of what they also have to be is a consumer that is upset with the government").

rules like those proposed by NASUCA here, the Commission recognized that broad guidelines that allow flexibility in billing will enable carriers in a competitive market to “distinguish their services by providing clear, informative, and accessible bills to their customers.”¹⁴ The Commission summarized:

Our decision to adopt broad, binding principles rather than detailed comprehensive rules, reflects a recognition that there are typically many ways to convey important information to consumers in a clear and accurate manner. For this reason, we disagree with those commenters who assert that more prescriptive rules are necessary to combat consumer fraud through the use of misleading telephone bills. Instead, our principles provide carriers flexibility in the manner in which they satisfy their truth-in-billing obligations. Accordingly, this approach responds to the concerns of many carriers that detailed regulations could increase their costs, and that rigid rules might prevent competing carriers from differentiating themselves on the basis of the clarity of their bills.¹⁵

Indeed, differentiating themselves based on the clarity of their bills is of such competitive importance that many carriers devote substantial resources to such billing issues. Verizon, for example, is constantly undertaking efforts to make its bills clearer and responsive to consumer desires. Verizon is also in the final stages of concluding a multi-year bill redesign study that included professional market survey consultants and focus groups to determine how Verizon may improve its bill format and content. These consumer surveys showed that consumers want more, not less, information about taxes, regulatory fees and other charges and that carriers that are responsive to consumer desires are viewed as market leaders.

Another way for companies to differentiate themselves is by deciding whether and which costs, whether they arise from regulatory surcharges, compliance or other basis, to pass along to their customers. Such flexibility was expressly recognized by the Commission in the *Truth-In-*

¹⁴ *Truth-In-Billing Order* ¶ 6.

¹⁵ *Truth-In-Billing Order* ¶ 10.

*Billing Order*¹⁶ and in consideration of other surcharges when it determined that recovery of such surcharges would be allowed, but not mandated.¹⁷ In this way, carriers also have the flexibility to decide how much of those charges they choose to recover from their customers. The *Truth-In-Billing Order* itself could not be clearer. There, in rejecting more proscriptive rules regarding the language used to describe the permitted line item charges, the Commission stated, “It is the carriers’ business decision whether, how, and how much of such costs they choose to recover directly from consumers through separately identifiable charges.”¹⁸

III. Consumers Have A Right To Know What They Are Being Charged For and NASUCA’s Proposal Would Only Increase Consumer Confusion.

There is nothing inherently misleading or deceptive about line item charges. Line item charges, accompanied by accurate, truthful descriptions, inform consumers about what they are being charged. As stated above, line item charges let consumers know whether their carrier has elected to pass on certain regulatory costs and fees to their customers instead of absorbing such costs in their rates, or that they have determined to recoup other administrative costs as well.

Line item charges thus provide consumers with information to make comparisons among providers and to choose a carrier that best meets their needs. Additionally, consumers have the

¹⁶ See, e.g., *Truth-In-Billing Order* ¶ 6 (“Moreover, by implementing these principles through broad, binding guidelines as described more fully below, we allow carriers considerable discretion to satisfy their obligations in a manner that best suits their needs and those of their customers.”); and ¶ 9 (rejecting calls for a more detailed regulatory approach urged by some commentators and stating, “We envision that carriers may satisfy these obligations in widely divergent manners that best fit their own specific needs and those of their customers”).

¹⁷ See, e.g., *USF Contribution Order* ¶ 42 (“the Commission rejected proposals to impose a mandatory end-user universal service surcharge on customer bills, stating that a mandatory surcharge might affect contributors’ flexibility to offer bundled services or new pricing options, possibly resulting in few options for consumers”); *LNP 3rd R&O* ¶ 135 (“We will allow but not require incumbent LECs subject to rate-of-return or price-cap regulation to recover their carrier-specific costs directly related to providing number portability through a federal charge assessed on end-users”).

¹⁸ *Truth-In-Billing Order* ¶ 56.

right to know when their rates increase or decrease due to federal, state or local government charges imposed on carriers.

There is also nothing misleading about stating that a particular charge is the result of regulatory action. The truth of the matter is that charges related to USF, LNP, SLC, 911 or even taxes, *are* the result of regulatory action. And to the extent that NASUCA claims that labels¹⁹ used by the carriers are misleading in that they suggest the government has required carriers to impose these charges on consumers, carriers clearly disclose that the charges are “not a tax or otherwise required by the government.”²⁰

Prohibiting any line item charges also could further confuse consumers in that carriers will be precluded from identifying the nature of services (including costs, fees and surcharges) the consumer is being charged. In addition, requiring only a lump figure could further obscure the relationship of the fee charged to the regulatory assessment. Again, the Commission has already addressed the infeasibility of requiring a lump sum figure, stating:

Moreover, we are concerned that precluding a breakdown of line item charges would facilitate carriers’ ability to bury costs in lump figures. Insofar as the regulatory-related charges have different origins, and are applied to different service and provider offerings, we also question whether implementation of a lump-sum figure of all charges resulting from federal regulatory action could be presented in a manner in which consumers could clearly understand the origin of such a charge.²¹

¹⁹ NASUCA also argues that the carriers’ surcharges “do not meet the Commission’s guidelines regarding standardized billing labels.” *NASUCA Petition* at 30. NASUCA, however, acknowledges that “the Commission never finalized rules regarding standardized labels.” *Id.* at 8 fn.16. Moreover, as for USF charges, the Commission later declined to “mandate a specific label for federal universal service line-items pursuant to our Truth-in-Billing rules.” *USF Contribution Order* ¶ 65.

²⁰ *NASUCA Petition* at 36.

²¹ *Truth-In-Billing Order* ¶ 55.

Even more problematic, because regulatory-related charges have different origins and are applied to different service and provider offerings as noted above, prohibiting the breakout of such charges could inhibit consumer's ability to comparison shop. In NASUCA's proposed world, carriers would roll all such regulatory charges into a base rate and consumers would then be able to compare "apples to apples." NASUCA's proposal, however, would not have its desired effect. As regulatory charges may differ from county to county (such as 911 charges) and fluctuate quarterly (as USF charges do), prohibiting carriers from separating out surcharges, taxes and fees would preclude consumers from determining whether differing rates are due to different taxing jurisdictions, different product and service offerings, fluctuating regulatory assessments or some other reason. NASUCA's proposal thus would envision a market where rates could fluctuate widely across carriers, across localities and across time, leading to an even lesser ability for consumers to comparison shop and creating even more consumer confusion.

IV. Prohibiting Any Line Item Charges Unless Mandated By A Regulating Body Would Violate Carriers' Protected First Amendment Rights.

Restricting the ability of carriers to impose line item charges that break out the amount of regulatory surcharges, fees or other costs in a truthful, accurate manner would face serious First Amendment concerns. The Supreme Court has recognized that corporations are afforded the same First Amendment protections of freedom of speech as are individuals, stating that "the inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual."²² "Corporations and other associations, like individuals, contribute to the discussion, debate, and

²² *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 777 (1978).

the dissemination of information and ideas that the First Amendment seeks to foster.”²³ And “[f]reedom of speech is indispensable to the discovery and spread of political truth.”²⁴ For this reason, the Supreme Court has invalidated numerous prohibitions aimed at restricting the ability of corporations to express political speech.²⁵

In this case, line item charges and the descriptions used to describe them convey important information reflecting the costs of governmental regulation that consumers are required to bear. The charges may indicate the regulatory purpose of a fee – for example, the purpose of universal service charges – or the origin of a tax (federal, state or a particular municipality). The line item charges therefore not only inform consumers about the nature of governmental regulation, but also enable accountability of the costs associated with such regulation. Indeed, it is critical that voters understand what costs their government is imposing on them in order to provide a check on governmental powers in a democratic society.²⁶ This type of information contains “the kind of discussion of matters of public concern that the First Amendment both fully protects and implicitly encourages.”²⁷ Carriers thus have a right to

²³ *Pacific Gas & Elec. Co. v. California*, 475 U.S. 1, 8 (1986) (internal quotations and citations omitted).

²⁴ *Consolidated Edison Co. v. Public Service Comm’n of New York*, 447 U.S. 530, 534 (1980) (internal quotations and citations omitted).

²⁵ See, e.g., *id.* (invalidating a state order prohibiting a privately owned utility company from discussing controversial political issues in its billing envelopes); *Bellotti*, 435 U.S. at 795 (invalidating state prohibition aimed at speech by corporations that sought to influence the outcome of a state referendum); *Pacific Gas & Elec.*, 475 U.S. at 20-21 (vacating Commission’s order that a gas and electric utility be required to apportion space in its billing envelopes for inserts of an opposing public consumer group).

²⁶ *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 765 (1976) (explaining that “if [commercial information] is indispensable to the proper allocation of resources in a free enterprise system, it is also indispensable to the formation of intelligent opinions as to how that system ought to be regulated or altered”).

²⁷ *Pacific Gas & Elec. Co.*, 475 U.S. at 9 (internal quotations and citations omitted).

convey this information and consumers have a right to receive it.²⁸ NASUCA apparently would prefer to hide these facts from consumers, choosing instead to allow line item charges only when the government itself has mandated it. Such restrictions, however, would be incompatible with the First Amendment and our democratic system of government.

At an absolute minimum, the speech at issue is entitled to the protection afforded to commercial speech. There is no question that the First Amendment protects commercial speech from unwarranted governmental regulation.²⁹ In *Central Hudson*, the Supreme Court adopted a four-part analysis for commercial speech. It explained:

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.³⁰

The party seeking to impose a restriction on commercial speech has the burden of justifying it, and this burden may “not be satisfied by mere speculation or conjecture.”³¹

In this case, line item charges are lawfully permitted and, as explained above, are not inherently misleading. Rather, truthful, accurate descriptions of line item charges better enable

²⁸ See *Virginia State Board of Pharmacy*, 425 U.S. at 765 (explaining the First Amendment right to receive information and ideas).

²⁹ See, e.g., *Central Hudson Gas & Elec. Co. v. Public Serv. Comm’n of New York*, 447 U.S. 557, 561 (1980) (“The First Amendment, as applied to the States through the Fourteenth Amendment, protects commercial speech from unwarranted governmental regulation”); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 637 (1985) (“There is no longer any room to doubt that what has come to be known as ‘commercial speech’ is entitled to the protection of the First Amendment”).

³⁰ *Central Hudson*, 447 U.S. at 566.

³¹ *Edenfield v. Fane*, 507 U.S. 761, 770 (1993); *Zauderer*, 471 U.S. at 648 (requiring evidence or authority, not unsupported assertions, that the potential abuses associated with the use of illustrations in attorneys’ advertising cannot be combated by any means short of a blanket ban).

consumers to comparison shop among those carriers that seek to recoup their costs or to include them in base rates. Consumers are also entitled to know the basis of their charges and whether their charges include costs that have been imposed on carriers by regulatory action. Moreover, because the Commission in the *Truth-In-Billing Order* acknowledged that line item charges could be labeled in a way to mislead,³² but concluded that guidelines and standardized labeling instead of prohibitions (as some commenters had requested) could adequately address the potential abuses, the Commission implicitly acknowledged that line item charges may in fact be presented truthfully and accurately. NASUCA thus cannot show that line item charges are misleading by mere speculation and assertion.³³

Even were *some* line item charges by certain carriers found to be misleading, a blanket ban against all line item charges would still infringe on First Amendment rights. The Supreme Court again instructs, “[b]ut where, as with the blanket ban involved here, truthful and nonmisleading expression will be snared along with fraudulent or deceptive commercial speech, the State must satisfy the remainder of the *Central Hudson* test by demonstrating that its restriction serves a substantial state interest and is designed in a reasonable way to accomplish that end.”³⁴ Thus, restrictions on speech must be “narrowly drawn” and information may not be completely suppressed “when narrower restrictions on expression would serve its interests as

³² *Truth-In-Billing Order* ¶¶ 49-50.

³³ See *Ibanez v. Florida Dept. of Business and Professional Regulation*, 512 U.S. 136, 146 (1994) (“If the protections afforded commercial speech are to retain their force, we cannot allow rote invocation of the words ‘potentially misleading’ to supplant the Board’s burden to ‘demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.’” (citing *Edenfield*, 507 U.S. at 771)).

³⁴ *Edenfield*, 507 U.S. at 768-69.

well.”³⁵ The Supreme Court has thus repeatedly rejected broad prophylactic rules restricting commercial speech.³⁶

A prohibition against line item charges would also fail to directly advance the FCC’s interest in ensuring that consumers pay fair and efficient rates, and would be more extensive than necessary to serve that interest. As the Commission itself noted, prohibiting line item charges could increase, rather than decrease, consumer confusion. *Truth-In-Billing Order* ¶ 55. And, “precluding a breakdown of line item charges would facilitate carriers’ ability to bury costs in lump figures.” *Id.* Banning line item charges would therefore not increase consumers’ ability to comparison shop nor decrease consumer confusion.

Furthermore, a complete ban of line item charges is clearly more extensive than necessary to serve any conceivable legitimate governmental interest in protecting against deceptive or fraudulent charges. The *Truth-In-Billing Order* already requires carriers to provide truthful and nonmisleading information in their bills, and enforcement of the Order may be undertaken by the FCC to address truly deceptive practices. Indeed, the Commission has indicated that it stands ready to use its enforcement powers to effect such result.³⁷ In addition, individual enforcement actions may be commenced by state agencies to provide further means to

³⁵ *Central Hudson*, 447 U.S. at 565.

³⁶ See *Central Hudson* (finding that regulations that completely banned promotional advertising by an electrical utility impermissibly restrained commercial speech in violation of the First Amendment); *Zauderer* (striking Ohio’s ban on use of illustrations in attorney advertisements); *Linmark Assoc. v. Twp of Willingboro*, 431 U.S. 85 (1977) (invalidating ban on the posting of “For Sale” and “Sold” signs on real estate); *44 Liquormart v. Rhode Island*, 517 U.S. 484 (1996) (finding that two statutes which prohibited advertisements that inform the public about retail price of alcoholic beverages were blanket bans on advertising that violated the First Amendment).

³⁷ See *Truth-In-Billing Order* ¶ 57 (“Although we decline to adopt specific rules here, we caution that we will not hesitate to take action on a case-by-case basis under section 201(b) of the Act against carriers who impose unjust or unreasonable line-item charges”).

address the FCC's and NASUCA's concerns. Individual enforcement actions will ensure that only those carriers who in fact have deceptive or fraudulent line item charges are brought in line to comply with the *Truth-In-Billing Order* and other laws. Enforcement of existing laws, rather than NASUCA's proposed ban, has the additional benefit of enabling carriers to provide truthful information without infringing on their First Amendment rights, while ensuring that ethical companies are not punished with the bad. Thus, where disclaimers, disclosures or "any means short of a blanket ban"³⁸ may address the FCC's concerns, as they do here, NASUCA's proposal for a blanket ban must be rejected.

Despite the availability of enforcement actions, NASUCA attempts to justify its broad prophylactic rules by stating that "[i]t would be administratively impossible to look at each carrier, or each carrier's fee, to determine whether the fee is sufficiently and accurately described, whether consumers are adequately informed of the fee, or whether the fee reasonably recovers the cost incurred by the carrier in complying with the regulatory program(s) to which the fee is attributed."³⁹ The Supreme Court also rejected that argument in a similar situation involving a ban on the use of illustrations in attorney advertisements in *Zauderer*:

We are not persuaded that identifying deceptive or manipulative uses of visual media in advertising is so intrinsically burdensome that the State is entitled to forgo that task in favor of the more convenient but far more restrictive alternative of a blanket ban on the use of illustrations. The experience of the FTC is, again, instructive. Although that agency has not found the elimination of deceptive uses of visual media in advertising to be a simple task, neither has it found the task an impossible one: in many instances, the agency has succeeded in identifying and suppressing visually deceptive advertising. Given the possibility of policing the use of illustrations in advertisements on a case-by-case basis, the prophylactic approach taken by Ohio cannot stand.⁴⁰

³⁸ *Zauderer*, 471 U.S. at 648.

³⁹ *NASUCA Petition* at 23-24.

⁴⁰ *Zauderer*, 471 U.S. at 649 (internal citations omitted).

NASUCA also claims that a ban against line item charges is not precluded by the First Amendment because it seeks to regulate conduct, not speech.⁴¹ NASUCA's proposed regulation of "conduct", however, is no different from the regulations that restricted the "conduct" of listing retail prices by liquor stores or using illustrations by attorneys in advertising or placing "For Sale" signs in front of homes, all of which were found to be infringing upon commercial speech by the Supreme Court.⁴² NASUCA's ban on the use of line item charges by carriers would similarly infringe upon the carriers' commercial speech.

Finally, NASUCA's unilateral decision that consumers are not sophisticated enough to discern and benefit from truthful information expresses a highly paternalistic view that consumers are better off with less information rather than with more. As the Supreme Court has noted, "The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good."⁴³ Consumers simply have a right to know what they are being charged for and how regulatory charges might affect their bills. Truthful, accurate line item charges better inform consumers and provide them with more of a basis to comparison shop, than leaving consumers in ignorance.

In short, the Commission must reject the relief NASUCA seeks. A blanket prohibition against all line item charges would severely constrain carriers' First Amendment rights, and adequate, less restrictive means exist for the Commission to address any concerns regarding untruthful and deceptive billing practices.

⁴¹ *NASUCA Petition* at 63-64.


⁴² *See generally 44 Liquormart; Zauderer, and Linmark Assoc.*

⁴³ *44 Liquormart*, 517 U.S. at 503.

Conclusion

For the reasons stated above, Verizon respectfully requests that NASUCA's petition be denied in its entirety.

Respectfully submitted,



Of Counsel
Michael E. Glover
Edward Shakin

Julie Chen Clocker
VERIZON
1515 North Court House Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3071

*Counsel for the
Verizon telephone companies*

July 14, 2004

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies participating in this filing are the local exchange carriers and long distance companies affiliated with Verizon Communications Inc. These are:

Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance
Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon Select Services, Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.